

**Letter of Findings Number: 08-0454
Adjusted Gross Income Tax
For Tax Period 2005-2006**

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ISSUES

I. Adjusted Gross Income Tax—Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; [45 IAC 3.1-1-3](#).

Taxpayer protests the imposition of tax.

II. Tax Administration—Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer, a non-resident of Indiana, is the sole shareholder of an S-Corporation Corporation that operates convenience stores with gasoline pumps at two locations in Indiana. Taxpayer failed to file Indiana Non-resident Income Tax Returns for the 2005 and 2006 tax years. After an investigation, the Indiana Department of Revenue (Department) assessed adjusted gross income tax and penalty against Taxpayer for the 2005 and 2006 tax years. Taxpayer protested the assessment. An administrative hearing was held, and this Letter of Findings results.

I. Adjusted Gross Income Tax—Imposition.

DISCUSSION

Taxpayer asserts that the amount of adjusted gross income tax is overstated. Taxpayer maintains that it has certain "business expense" that should be deducted and its cost of goods sold deduction should be increased.

A. "Business Expenses."

Taxpayer asserts that it has certain "trade and business expense" that should be deducted in figuring its 2006 adjusted gross income as allowed under [45 IAC 3.1-1-3\(1\)](#), which provides that the "trade and business deductions" that are "contained in Internal Revenue Code Section 62 are allowed in determining Indiana Adjusted Gross Income."

During the course of the protest, Taxpayer submitted a list of expenses. Taxpayer was asked, but failed to provide any documentation that verified the amount of these listed expenses or that demonstrated the listed expenses were attributable to the Taxpayer's business.

IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Accordingly, it is Taxpayer's responsibility to retain the documentation that supports the amounts it used to determine the tax owed.

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer failed to produce any documentation that demonstrates the amount or nature of these expenses, Taxpayer has failed to meet its burden to prove that the expenses were business expenses.

Therefore, Taxpayer's protest is denied.

B. Cost of Goods Sold.

Taxpayer asserts that its cost of goods sold deduction should be increased. Taxpayer maintains that since the Department's sales tax audit increase its gross sales that the cost of goods sold should also be increased. Taxpayer invites the Department to use an estimated profit margin of twenty percent.

However, the Department declines the Taxpayer's invitation to use an estimated profit margin of twenty percent. During the course of the protest, Taxpayer was asked, but failed to provide documentation supporting its assertions. Moreover, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department is required to accept Taxpayer's assertions without providing the supporting documentation. As previously stated, IC § 6-8.1-5-4(a) provides that it is Taxpayer's responsibility to retain the documentation that supports the amounts it used to determine the tax owed.

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer failed to produce any documentation that demonstrates that the Department's assessment was incorrect, then Taxpayer has failed to meet its burden to prove the amount used for the costs of goods sold is incorrect.

Therefore, Taxpayer's protest is denied.

FINDING

In summary, Taxpayer's protests of subpart A and B are denied.

II. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this case, Taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer argues for penalty wavier by making a general statement of penalty protest. However, Taxpayer has not presented any evidence that Taxpayer has acted with reasonable cause. Therefore, Taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

FINDING

Taxpayer's protest is denied.

CONCLUSION

In summary, Taxpayer's protests of the sales tax and penalty assessments are denied.

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